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# INTERNATIONAL ARRANGEMENTS AND AGREEMENTS RELATING TO TRANSNATIONAL CORPORATIONS

## International framework for transnational corporations

## Report of the Secretary-General

SUMMARY

The present report reviews recent trends and developments in international law- and policy-making activity which concern the emerging international framework for foreign direct investment and the operation of transnational corporations. At the multilateral level, the most significant developments were the adoption of guidelines on the Treatment of Foreign Direct Investment and the continuation of the negotiation of agreements on international trade in services, trade-related investment measures and trade-related aspects of intellectual property. At the regional and interregional levels, the main treaty-making activity occurred in the context of regional integration schemes and the expansion of free trade zones. Of importance for foreign investment operations was also the 1991 review of the OECD Declaration on International Investment and Multinational Enterprises. At the bilateral level, the network of bilateral treaties for the promotion and protection of foreign direct investment continued to expand; cooperation agreements were concluded between the United States and a number of developing countries. Various instruments were also successfully concluded on specific aspects relative to the operations of transnational corporations, notably on environmental protection, antitrust and banking supervision.

These developments confirm a trend already established in the 1980s: the main preoccupation of Governments from both developed and developing countries continues to be the provision of policy conditions under a legal framework that would attract foreign direct investment flows into their countries.

* E/C.10/1993/1.

All these developments contribute to the elaboration of the international framework for foreign direct investment and transnational corporations. A preliminary assessment of the contributions of the new instruments to the international framework suggests a further strengthening of principles and standards on the treatment of foreign investors at all levels, while the elaboration of standards on the activities of transnational corporations has proceeded mainly through the conclusion of instruments dealing with specific issues (such as environmental protection, banking and financial markets supervision and illicit payments in international business transactions) that have raised particular policy concerns in recent years.

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## INTRODUCTION

1. At its eighteenth session, the Commission on Transnational Corporations requested the Secretary-General to prepare a report on the international framework for transnational corporations, for consideration at its nineteenth session. The present report, prepared in response to that request, reviews recent trends and developments in international law- and policy-making activity which concern the emerging international framework for foreign direct investment and the operations of transnational corporations. It builds on and updates previous reports and related materials of the United Nations on the same topic. Last year's report (E/C.10/1992/8) summarized the background and evolution of the international framework from the 1940s to the 1980s. It took stock of the international principles and standards that have been elaborated during the second half of this century and evaluated, in the light of current governmental practice, the extent to which these norms have remained relevant. Since last year, a number of significant instruments have been completed, and negotiations have continued on others. Instruments that were concluded in the past have been reviewed, and some have been amended. In addition, the application and follow-up of active instruments has provided valuable material for the interpretation of specific principles and standards, in the light of concrete situations. All these developments contribute to the further elaboration of the overall international framework. Thus, one of the purposes of this report is to assess the extent to which the existing outline of the international framework has been altered by these developments; whether and how the principles and standards recently elaborated have been modified, complemented or superseded by the new ones; and, ultimately, how these developments have affected transnational corporations activities and their relations to Governments. Lastly, the report briefly suggests, in the light of the current situation, the present and future needs for further action regarding international cooperation on issues relating to transnational corporations.

## I. RECENT TRENDS AND DEVELOPMENTS IN INTERNATIONAL COOPERATION ON FOREIGN INVESTMENT ISSUES

2. In the early 1990s, as in the 1980s, the main preoccupation of Governments, from both developed and developing countries, has been to provide the policy conditions that would attract foreign direct investment flows into their countries. With the heightened emphasis on the part of the capital-importing countries on foreign investment as a source of capital flows (including resources, such as technology, management skills, know-how etc.) and with the new policy orientations of developing countries relating to the liberalization of foreign investment regimes and privatization, most intergovernmental efforts have concentrated on the preparation of instruments that complement and support legislative actions at the national level, aimed at establishing a legal framework for foreign direct investment free from many of the previous regulatory conditions and controls.

3. To achieve these goals, Governments have channelled their cooperation activity on foreign direct investment through a variety of efforts at all levels (global, multilateral or interregional, regional and bilateral), involving other countries in manners that make it increasingly difficult to define clear

cooperation patterns along North, South, East or West division. The legal and institutional approach to this international law- and policy-making activity has also been diverse. At the global level, legally binding commitments have been made on partial aspects of foreign direct investment operations, notably on the protection of the environment. Other multilateral efforts to establish legally binding regimes for key aspects of foreign direct investment operations have continued, in the context of the Uruguay Round of trade negotiations. But the elaboration of general principles and standards relating to foreign direct investment which can be applied to all countries has proceeded on the basis of recommendations or guidelines of a voluntary nature. One such initiative covering general principles on the treatment of foreign direct investment has been brought to a successful conclusion - namely, the World Bank Guidelines for the Treatment of Foreign Direct Investment - whereas the major effort to complete a comprehensive framework covering both standards for the treatment and for the activities of transnational corporations has not been completed.

4. While the global approach to normative foreign direct investment issues continues and, indeed, is necessary in order to match a similar approach in the organizational structures and operations of transnational enterprises, it is at the regional and interregional levels where international activity in recent years has been most intense - and fruitful. The new impetus given to the consolidation of regional integration schemes and free trade areas has acted also as a centrifugal force attracting to the regional centres other countries geographically close and has led to a variety of more or less loose forms of association or cooperation (i.e., within Europe, between Europe and other regions, within Africa, within the Americas, within Asia, between the Americas and Asia). Characteristically, the resulting commitments are legally binding in nature and are part of a package covering a number of interrelated issues, which may include trade, investment, financial and technology transfers, restrictive business practices and intellectual property matters.

5. The network of bilateral treaties for the promotion and protection of foreign investments has continued to expand, as have also other types of bilateral treaties dealing with issues of immediate concern to foreign investors - namely, the treaties for the avoidance of double taxation of income and capital and bilateral guarantee agreements. Recently, a number of bilateral cooperation agreements have been added to the list of bilateral treaties. The new agreements, however, bear a closer resemblance to the regional integration instruments mentioned above than to the more traditional types of bilateral investment treaties. They are aimed at creating or expanding or paving the way for the establishment of free trade and investment zones. It is interesting to note that, as integration schemes expand their coverage over investment questions, more and more agreements relating to investment are being concluded not by individual countries separately but by groups of countries under the single umbrella of the integration organization to which they belong.

6. In spite of this variety of forms of cooperation on foreign direct investment, the outline of issues that have been covered under most instruments is quite similar, as is the approach and philosophy which inspire them. As already indicated, liberalization of national barriers to foreign investment has been one of the main themes reflected in most cooperation efforts. Liberalization affects mostly the conditions of entry and establishment but also operational conditions and the free transfer of funds and repatriation of the

investment. Liberalization efforts are made either through the granting of an explicit right to entry and establishment or through the adoption of general standards of treatment, such as national and most-favoured-nation treatment and non-discrimination (qualified sometimes by reciprocity requirements). Increasingly also, international arrangements address the question of performance requirements directly in order to prevent or discourage them. To minimize the potential negative effects on developing national economies of the unqualified application of these principles and standards, almost invariably the instruments contain derogations or exceptions to the general principles. In most instances this is done by way of adding a list of excepted activities and industries.

7. Monitoring mechanisms are usually prescribed. These tend to rely on notification procedures and transparency requirements. In addition to the liberalization aspects, most instruments guarantee a certain level of protection to the foreign investments, both in general terms and in specific areas, notably, expropriation and nationalization, and State contracts. In all of these aspects, the instruments tend to stipulate substantive standards, and to provide for various alternatives regarding the settlement of disputes, including arbitration.

8. With respect to standards and principles for the activities and behaviour of transnational enterprises, international activity has concentrated mostly on a number of specific issues, which are high in the international policy agenda (such as environmental protection, banking and financial markets supervision, illicit payments in international business transactions). In these and other areas, particular emphasis has been placed in the development of preventive measures, mostly by way of information disclosure requirements and auditing requirements. On the other hand, major efforts to elaborate comprehensive instruments containing standards for the full range of activities of transnational enterprises have been less successful. Nevertheless, indirect references to the obligations of foreign investors are found in most of the liberalization instruments referred to above. Apart from a general obligation to act in good faith, the overall regulation of foreign investor activities in a host country tend to be considered as a matter to be determined by that country.

9. In the past few years, a number of important developments concerning the negotiation, conclusion and follow-up of instruments of relevance to the international framework for transnational corporations took place at the multilateral, regional, interregional and bilateral levels. At the multilateral level, the most significant developments were the adoption of Guidelines on the Treatment of Foreign Investment and the continuation of the negotiations of international agreements on international trade in services, trade-related investment measures and trade-related aspects of intellectual property in the context of the Uruguay Round of trade negotiations.

10. At the regional and interregional levels, the main treaty-making activity occurred in the context of regional integration schemes and the expansion of free-trade zones. Of importance for foreign investment operations also was the 1991 review of the OECD Declaration on International Investment and Multinational Enterprises. At the bilateral level, the network of bilateral treaties for the promotion and protection of foreign direct investment continued to expand, while cooperation agreements were concluded between the United States

and a number of developing countries. Various instruments were also successfully concluded on specific aspects relative to the operations of transnational corporations, notably on environmental protection, antitrust, and banking supervision. These and other developments are discussed below.

## II. GLOBAL AND MULTILATERAL INSTRUMENTS

### A. Guidelines on the Treatment of Foreign Direct Investment

11. In October 1992, after a short period of negotiations, the Development Committee of the Board of Governors of the International Monetary Fund (IMF) and the World Bank approved the Guidelines on the Treatment of Foreign Direct Investment. 1/ The Guidelines are intended to be an overall framework which embodies essential principles meant to promote foreign direct investment. With respect to their legal nature, the Guidelines were brought to the attention of Governments by the Development Committee of the World Bank as a useful set of voluntary standards. Therefore, at this stage, they represent recommendations to Governments with no binding effect. Regarding their scope, the Guidelines contain prescriptions to States addressing the treatment they should afford to private foreign investors within their jurisdiction. But they do not address the obligations or activities of foreign investors in their host countries, except indirectly in certain provisions of a very general nature. Thus, in defining the scope of the instrument, it is stated that the provisions of the Guidelines apply to existing and new investments which are established and operating in good faith and in full conformity with the regulations of the relevant State. It should be noted, however, that this open-ended reference to the national laws of the relevant State provides ample discretion to Governments to establish unilaterally a framework of norms for the activities and operations of foreign investors.

12. The Guidelines encourage the admission of foreign investors while recognizing the possibility of some exceptions and insisting on the importance of providing information to investors about investment conditions (guideline II). States are also advised to avoid complicated procedural regulations or conditions on admission. Yet, their right to regulate is preserved - a principle which is not in contradiction with the overall liberal approach of the Guidelines - especially when it is required by public policy and under special circumstances.

13. The Guidelines endorse the general standards of fair and equitable treatment, national and most-favoured-nation treatment (guideline III). These standards should be applied, in principle, to all the activities of the foreign investor, including the ultimate disposal of the investment. In addition, the Guidelines elaborate on a number of specific treatment standards on key aspects of the operations of foreign investments which are particularly important for investors:

(a) Timely issuance of authorization;

(b) Flexibility in relation to employment policy;

(c) Facilitation of transfer of funds and repatriation of the investment;

(d) Prevention and control of corrupt practices and promotion of accountability and transparency in foreign investment operations;

(e) "Best practices" in relation to fiscal incentives;

(f) "Best practices" by developed and capital surplus countries regarding the facilitation and promotion of foreign investment to developing countries.

14. The provisions on expropriation (guideline IV) are fairly detailed. The concept of expropriation is broadened to include crippling expropriation. In the light of recent practice, the Guidelines recognize the right of the State to expropriate, only if it is done in accordance with applicable legal procedures, in the pursuance in good faith of a public purpose, without discrimination on the basis of nationality and against the payment of appropriate compensation. The Guidelines recommend the use of detailed and practical formulations for compensation, adaptable to each case, and drawing mainly from international arbitral awards. Thus, it is suggested that such compensation should be deemed prompt, adequate and effective, and then the meaning of each of these terms is further elaborated in considerable detail. Some exceptions to these standards are also contemplated. The investor may be entitled to a lesser compensation or none at all if he breaches the law of the host State. The Guidelines also recognize that, in the case of exceptional non-discriminatory large-scale nationalizations, compensation may be determined by inter-State negotiations or by international arbitration. On the question of the settlement of disputes (guideline V) between private foreign investors and the host State, the Guidelines recommend negotiation between the parties as the best way of settling such disputes. They also endorse independent arbitration as an alternative desirable mechanism, with a first review by a national court. The independence of the arbitration procedure is stressed. This means basically that the arbitrators, or at least a majority of them, should not be appointed by one party. The Guidelines encourage the use of the International Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID) mechanisms in case of agreement on independent arbitration.

15. Other already established mechanisms within the World Bank - for example, the Multilateral Investment Guarantee Agency (MIGA) - have recently contributed to the development of the international legal framework for foreign direct investment and transnational corporations. MIGA, established to provide protection for foreign investment projects in and among developing countries by providing insurance guarantee against non-commercial risks, expanded its activities in 1992 by doubling the volume of projects insured relative to fiscal 1991. 2/ Despite the decline of nationalizations, expropriation remained the main risk covered by the Agency, followed by currency transfer, war and civil disturbances, and breach of contract. ICSID, on the other hand, was ratified by five countries in 1992: one from Latin America (Chile), three from Central and Eastern Europe (the former Czechoslovakia, Estonia and Albania) and one from Africa (United Republic of Tanzania). Arbitration proceedings under ICSID were initiated in one case, while annulment proceedings were instituted in another; the dispute in the third case was settled amicably. 3/

16. With regard to another major framework instrument, the draft code of conduct on transnational corporations, informal consultations held in July 1992 led to the conclusion that no consensus was currently possible on the code.

Delegations felt that the changed international economic environment required that a fresh approach should be examined which could include the preparation of guidelines and/or any other international instruments on foreign investment at the next session of the Commission on Transnational Corporations. It was further indicated that, in the meanwhile, the Division on Transnational Corporations and Management and any interested delegation might prepare suitable background papers to facilitate that task. 4/

17. It is generally recognized that the code negotiations, which spanned a period of more than 15 years and involved all countries and regions, contributed significantly to the elaboration of principles and standards on foreign direct investment. The principal thrust of the draft code (complemented with more detailed instruments) is to develop a global instrument which reflects a balance between standards to attract foreign investment and standard, which ensure conformity with national priorities, which is essentially a matter for national Governments to determine. The negotiations, in addition to elaborating general principles to guide the treatment of foreign investors by host Governments, developed a set of rules of good conduct suggested to guide foreign investors behaviour.

## B. Instruments in the Uruguay Round of trade negotiations 5/

18. Three other major multilateral instruments were integrated into the draft final act issued by the Director-General of GATT in December 1991 and embodying the latest results of the Uruguay Round of trade negotiations - namely, the draft agreement on trade in services, the draft agreement on trade-related investment measures and the draft agreement on trade-related intellectual property measures. Their completion depends on negotiation of other aspects of the overall international trade package contemplated under the Uruguay Round of trade negotiations (notably, on agricultural subsidies). It is mainly through their attempts to regulate and liberalize trade in services, performance requirements and intellectual property matters that the proposed standards and rules contained in these draft agreements will relate to, and produce effects on, foreign direct investment.

### 1. Draft agreement on trade in services

19. Six years of intensive negotiations led to the draft agreement on services. Though some issues still remain unsettled, the text reflects broad acceptance of the framework of the agreement. The proposed instrument covers any services in any sector, except services supplied in the exercise of governmental functions. In addition, specific rules are provided for a number of service industries, such as telecommunications, financial services and air transport. The notion of "trade in services" is also defined broadly so as to include a wide range of modes of delivery.

20. The liberalization of trade in services, according to the latest text of the draft agreement, would proceed on the basis of some basic principles applying to all service industries and all parties. In addition, national schedules of commitments would initiate a process of continuing liberalization for individual countries. Thus, the draft agreement prescribes

most-favoured-nation treatment as a key principle applying to services and service providers of any contracting party (though some exceptions to this principle are also contemplated). Another basic pillar of the draft agreement is the principle of transparency, whereby Governments would be expected to make available all relevant laws and regulations and related documents. To facilitate the integration of the developing countries in the international trade of services, the draft agreement contemplates the conclusion of negotiated commitments on access to technology, access to distribution channels and information networks. Given the special relevance of domestic regulations for services trade, the draft agreement prescribes standards for a reasonable and objective application of all national regulations, so as to avoid discrimination. It also includes obligations on the recognition of qualification standards for authorizations, licenses and other administrative purposes, while encouraging the harmonization of local standards under internationally agreed criteria. Significantly, restrictive business practices by service enterprises are not the subject of direct regulation in the text. This is so despite the fact that monopolistic situations are a common (and natural) occurrence in key service industries such as air transport, telecommunications, utilities and social services. Another key aspect of the current text is the general obligation not to restrict the transfer of payments for current transactions. However, limited restrictions are allowed for balance-of-payments difficulties, subject to certain conditions.

21. Market access and national treatment are not treated as general obligations under the draft agreement but as parts of commitments to be made in national schedules. The overall commitment on market access is to eliminate progressively such measures as limitations on numbers of service providers, on the total value of service transactions, or on the total number of service operations or people employed, on the maximum levels of foreign capital participation or on the organizational and legal form of the enterprises providing the services.

22. The standard of national treatment prescribed is such that, while it does not totally proscribe different treatment between foreign and national service providers, the conditions of competition should not be modified in favour of domestic providers.

23. In March 1992, it was reported that offers on initial commitments under national schedules had been tabled by 47 participants, and that in 24 cases, participants had revised previous proposals. It was thought that the level of commitment towards service liberalization contained in these proposals had improved considerably vis-à-vis previous ones. Thirty-two countries had presented draft lists of intentions with respect to most-favoured-nation exemptions (another bone of contention in the negotiations on the draft agreement). Significant progress was also achieved in the negotiations on the individual agreements on telecommunications and financial services.

### 2. Draft agreement on trade-related investment measures

24. While the notion of an international regime to deal with trade-related investment measures in the context of trade liberalization has been accepted in principle, no accord seems to have been reached as to the measures to be

included under the draft agreement - for example, should all trade-related investment measures be automatically prohibited? Should restrictive business practices by corporations be considered as such measures? Thus, the 1991 draft contains an illustrative list of measures related to trade in goods and inconsistent with articles III (national treatment) and XI (prohibition of quantitative restrictions) of the GATT. Among the trade-related investment measures included are local content requirements and measures that restrict the volume or value of imports or relate it to the level of exports, including access to foreign exchange. Such measures should be notified and eliminated within two years for developed countries, and within five to seven years for developing and least developed countries. Furthermore, the negotiators agreed to review the list of such measures within five years and consider whether the draft agreement should be complemented with provisions on investment and competition policy.

### 3. Draft agreement on trade-related intellectual property measures

25. The draft agreement on trade-related aspects of intellectual property rights identifies seven intellectual property rights - copyrights, geographical indications, industrial designs, patents, layout designs of integrated circuits, trade secrets, and know-how - each of which is submitted to specific norms and principles. In addition, the draft agreement sets out general principles, including national and (for the first time in an intellectual property agreement) most-favoured-nation treatment.

## C. Environmental agreements

26. A significant development for international investment operations was the United Nations Conference on Environment and Development (Rio de Janiero, June 1992) which led to the conclusion of a number of major agreements on various aspects of environmental protection. The Conference adopted Agenda 21, which contains a broad programme of action with specific recommendations addressed to transnational enterprises. It suggests, among other things, that transnational corporations should apply sound environmental policies, in both their host and home countries, and facilitate the transfer of environmentally sound technology. They are also requested to develop cleaner production technologies, minimize and reduce risks by providing information and their hazardous waste management, and participate in full-cost environment accounting. According to Agenda 21 the objectives that tend to promote the best environmental practices by transnational corporations could be achieved by the wider adoption of environmental codes of conduct and by reporting and follow-up mechanisms.

## III. REGIONAL ARRANGEMENTS

### A. North American Free Trade Agreement

27. In August 1992, Canada, Mexico and the United States signed the North American Free Trade Agreement (NAFTA) 6/ to eliminate barriers to trade in goods and services and to increase investment opportunities within North America. With respect to investment, NAFTA prescribes that each party shall grant investors and investments of another party no less favourable treatment than that it accords, in like circumstances, to its own investors. This formulation of the principle of national treatment is broad enough to apply to all aspects of investment operations, including the establishment of such investment. In addition to national treatment, NAFTA also prescribes the principle of most-favoured-nation treatment among the parties. The resulting standard of treatment to be granted to investments from NAFTA should be the better of these two. On the other hand, the minimum standard of treatment for investments should be that prescribed by international law, including fair and equitable treatment and full protection and security under the law. These provisions are to be construed in a manner so as not to prevent a NAFTA party from prescribing special formalities in connection with the establishment of investments from another party (i.e., residence requirements or information disclosure requirements).

28. Another salient feature of the NAFTA provisions on investment is the prohibition against imposing or enforcing performance requirements on investments of the other parties, upon establishment or through the life of the investment. For that purpose, the treaty provides a list of measures which are considered performance requirements. These include export requirements, local content, import requirements, licensing of technology requirements, exclusive sales requirements, and exchange control requirements. However, the granting of incentives or advantages, tied to compliance with specific requirements - regarding, mainly, training or employment of workers, construction or expansion of facilities, or research and development - is explicitly permitted under NAFTA. Another important provision for investors is the prohibition against imposing restrictions on the nationality of the senior management of NAFTA investments. However, under the treaty the parties are allowed to require that a majority of the board of directors or any committee thereof of an investment from a NAFTA country be of a particular nationality. NAFTA also contemplates some reservations and exceptions on most of the above provisions with respect to sectors and activities, as set out in separate schedules annexed to the treaty.

29. With respect to the transfer of payments, the treaty stipulates that all transfers should be made freely and without delay. Such transfers are defined broadly to include profits, dividends, interests, royalties and management fees, technical assistance, and the proceeds from the sale of all or any part of the investment or from its partial or complete liquidation. Moreover, it is stipulated that the transfers should be permitted in freely usable currency at the market rate of exchange prevailing on the date of the transfer. Such transfers may be prevented through the application in good faith of insolvency laws, securities regulations, enforcement of judgements in adjudicatory proceedings and so on.

30. NAFTA also deals with the expropriation of investments. Expropriation is defined broadly to include any measures which are tantamount to nationalization or expropriation of an investment. The parties are permitted to expropriate or nationalize only if they do so for a public purpose, on a non-discriminatory basis, in accordance with due process of law and on payment of compensation. The standards for compensation are also laid out in detail in the treaty. In addition to stating the valuation criteria to be used, it stipulates that compensation shall be paid without delay, be fully realizable and, when paid, shall be freely transferable.

31. The above-mentioned provisions notwithstanding, NAFTA establishes that all investment activity in the territory of its parties should be undertaken in a manner sensitive to environmental concerns and, thus, nothing in the treaty should be interpreted as preventing the parties from maintaining or enforcing any measure that is considered appropriate in the areas of environment, health and safety.

32. Lastly, the treaty includes lengthy provisions on the settlement of investment disputes between private investors and any of the parties. It recommends, first, resource to consultation and negotiation; if these options fail, it establishes the conditions under which arbitration should proceed, in order to ensure equal treatment among investors in accordance with the principle of international reciprocity and due process before an impartial tribunal.

33. Other aspects of NAFTA of particular relevance to investment issues are those dealing with service transactions. The Agreement deals with financial services by setting out principles and specific national commitments, plus some reservations to the principles. Thus, it recognizes the right of establishment of financial service providers of a NAFTA country in another NAFTA country; service providers must be treated according to national treatment and most-favoured-nation treatment principles.

34. In the field of intellectual property, NAFTA contains obligations providing a high level of effective protection and enforcement measures.

### B. OECD instruments 7/

35. The developed countries have kept investment policy issues under review mainly through the Organisation for Economic Cooperation and Development (OECD), as part of the follow-up and monitoring mechanisms established by three OECD instruments: the Code of Liberalisation of Current Invisible Operations, the Code of Liberalisation of Capital Movements and the Declaration on International Investment and Multinational Enterprises. All these instruments contain important commitments in relation to the progressive liberalization of foreign investment-related operations and the gradual assimilation of foreign and national investors in their treatment by host Governments. They seek to put these commitments in effect mainly through notification and transparency requirements, monitoring and periodic review measures. Since 1984, the Codes have undergone several modifications to expand their scope (notably in the area of services), while the reservations and derogations by member countries have been considerably reduced. In the most recent amendment, which took place in 1989, the Codes were expanded to cover short-term capital movements in addition

to the most common forms of medium- and long-term operations. The amendment also contained detailed specific provisions regarding the liberalization of various services, including banking and financial services. Reservations lodged by member countries were reviewed by the Council of Ministers of OECD in 1992. The reservations concentrated mostly in a few countries which have retained their restrictions on cross-border capital transactions, especially short-term operations, and outward portfolio investment.

36. The 1976 OECD Declaration on International Investment and Multinational Enterprises underwent its third review in 1991. The Guidelines attached to the Declaration were strengthened by the addition of a new chapter on the environment; in all other respects, the text of Guidelines was considered to be adequate. The Decisions on National Treatment and on Jurisprudence and Conflicting Requirements, which are also attached to the Declaration, were also amended during the 1991 review. In contrast with the Liberalisation Codes, the Decision on National Treatment instrument relates to conditions of established foreign-controlled enterprises. Some of the main measures and practices under review relate to investment by already established enterprises, official aids and subsidies, taxation, government procurement and access to local bank credits and local capital markets. The revised text has placed increased emphasis on the transparency of existing measures having a bearing on the principle of national treatment, thus strengthening notification requirements. The Decision on Jurisdiction and Conflicting Requirements has provided an important mechanism for seeking to determine procedures and principles for the avoidance and resolution of jurisdictional conflicts in relation to the operations of transnational enterprises.

37. In 1992, the member States of OECD began to study the advantages and feasibility of a comprehensive investment instrument to cover all the matters dealt with in various separate instruments. A comprehensive instrument would deal with matters relating to entry and establishment of foreign direct investment (now covered under the Liberalisation Codes) as well as with issues relating to established foreign affiliates. It would, thus, consolidate the OECD framework for dealing with foreign direct investment.

### C. EC/United States Antitrust Cooperation Agreement

38. Further moves towards closer cooperation between developed countries led, in 1991, to the conclusion between the United States and the European Community (EC) of the Antitrust Cooperation Agreement. 8/ The aim of the instrument is to facilitate mergers between the two subregions by intensifying cooperation in the area of competition law.

### D. Recent activities by the Basle Committee on Banking Supervision 9/

39. Transnational banks play an important role in the movement of foreign direct investment. In addition to being a channel and important source of capital, they are active participants in investment projects around the world. Supervising, regulating and promoting the activities of banks is a task that has been undertaken since 1974 by the Basle Committee on Banking Regulations and

Supervisory Practice, established by the central banks of the industrialized countries members of the Group of Ten. The Committee has issued recommendations dealing with various aspects of bank activities. In 1988 it formulated an accord on minimum capital and reserves requirements. An amendment to the accord was issued in November 1991 on general loan loss reserves. The Committee has also issued proposals concerning the introduction of minimum capital requirements for the market risks incurred by banks and securities firms. It prepared a set of principles on money laundering (to which the recent World Bank Guidelines make reference). In the aftermath of the affair of the Bank of Credit and Commerce International, the Committee issued, effective June 1992, a set of minimum standards for the supervision of banks, designated to strengthen the Basle Concordat. They can be summarized as follows:

(a) All international banking groups and international banks should be supervised by a home-country authority which capably performs consolidated supervision. In some countries, since supervisory responsibility is chaired by two or more authorities, the word "authority" is used to include all relevant authorities in any one country;

(b) The creation of a cross-border banking establishment should receive the prior consent of both the host-country and the bank's supervisory authority and - if different - the banking group's home-country supervisory authority;

(c) Supervisory authorities should possess the right to gather information from the cross-border banking establishments of the bank or banking groups for which they are the home-country supervisor;

(d) Most importantly, if a host-country authority determines that any one of the minimum standards is not met to its satisfaction, that authority could impose restrictive measures necessary to satisfy its prudential concerns consistent with those minimum standards, including a prohibition against the creation of banking establishments. Thus, a host-country authority should determine whether the bank or banking group is chartered or incorporated in a jurisdiction with which the host-country authority has a mutual understanding for the gathering of information from cross-border establishments. Also, the host-country should determine whether consent for outward expansion has been given by the appropriate home-country authorities. Finally, the host-country authority should determine whether the bank and - if different - the banking group are supervised by a home-country authority which has the practical capability of performing consolidated supervision.

## E. Integration among Western European countries

### 1. European Economic Area

40. Regional integration among Western European countries was given additional impetus with the conclusion, on 2 May 1992, of an agreement between the countries members of the European Free Trade Association (EFTA) (with the exception of Switzerland, which recently voted out of the agreement in a national referendum) and the EC, creating a European Economic Area (EEA). 10/ Under the agreement, EFTA countries will join the EC internal market by removing a variety of non-tariff barriers to the interregional movement of goods,

services, capital and persons, thus creating a common economic space of about 380 million people. The removal of all remaining restrictions and regulations relating to payments and capital movements could have an immediate impact on foreign direct investment flows. In addition, earlier barriers to the right of establishment and national treatment between the two economic zones will be abolished, thus permitting the free establishment of subsidiaries and branches in all EEA countries under the same conditions and treatment according to host-country enterprises. Harmonization of regulations in the services area will greatly facilitate the expansion of service enterprises through the EEA, while the application of the competition policies of the EC to the entire EEA will prevent abuses of market power.

41. The European Economic Area does not include countries from Central and Eastern Europe. Regional cooperation with them remains very loose, although recent moves might eventually lead to closer integration into the area.

2. Establishment of a common market within the EC

42. The objective of the EC, as stated in its founding agreement, is to establish a common market by freeing the movement of goods, capital, services and persons between its member States. 11/ Foreign direct investment is therefore affected either directly or indirectly by the integration efforts. In concrete terms, the movement towards a common market has, during the initial phases, benefited some areas and some sectors more than others. The liberalization of transactions directly or indirectly affecting foreign direct investment, although continuous, has been slow and limited. It is only during the last phase, marked by a new dynamic, that important steps have been achieved in building up a framework dealing with foreign direct investment. To that end, in the past few years, important regulations were adopted in the field of capital movements, financial services and other activities having a bearing on foreign direct investment.

43. The liberalization of capital movements among EC member countries, despite being one of the fundamental principles for the construction of a common market, was given effect by an EC directive only in July 1990, for all members except Greece, Ireland, Portugal and Spain. Those four countries, which benefited from the transitional arrangements, were expected to make considerable progress in the liberalization of capital movements by the end of 1992. Yet the Commission of the EC, which monitors the implementation of the directive, still refers to remaining obstacles owing to measures or practices which favour national instruments or financial institutions, in particular through tax measures or prudential rules. (It has to that end initiated infringement proceedings in cases where procedures for monitoring or controlling transfrontier capital transfer do not comply with the directive.) Another significant instrument affecting foreign direct investment directly was the Regulation on the Control of Concentrations Between Undertakings, adopted in 1989 by the Council of Ministers, which regulates mergers, takeovers and acquisitions within or outside the EC with a view towards maintaining and developing effective competition within the common market. The formation of the single market has triggered extensive takeover and merger activity both within and across national borders.

44. In the field of financial services, various directives in the 1970s had cleared most of the obstacles to the freedom of establishment for credit institutions and for insurance companies. The freedom to provide services from an establishment abroad was secured only in the second half of the 1980s in the insurance and banking industries. The second banking directive of 1989 consolidated the principle of a single banking licence valid through the EC and authorizing a credit institution to operate anywhere in the community, either through branches or directly. The framework for the liberalization of financial services was further complemented in 1992 by a stipulation that the supervision of financial institutions would be carried out by the member State in which the head office of the relevant bank or insurance company was located. In 1992 the right to provide financial services already enjoyed by commercial banks was extended to investment firms.

45. The harmonization and coordination of company law - another aspect closely connected with foreign investment - has been less successful. Although partially harmonized, national company statutes are still the main framework on most aspects of corporate law, especially after the European Court of Justice observed in a 1988 case that the Treaty of Rome had taken account of that variety in national legislation. The most ambitious attempt to elaborate the draft European company statute has been jeopardized by difficulties on the provisions dedicated to worker participation in the management of a corporation.

## F. Recent integration efforts in South and Central America

46. Attempts to consolidate regional and subregional economic integration schemes in Latin America have been made since the 1960s. Yet the integration process in Latin America, in addition to being diffuse, has not been continuous and, until recently, has not led to the establishment and maturing of strong integration institutions. Instead, new organizations have replaced older ones, while older mechanisms have either reached a stalemate or had to undergo a fundamental change in their policy approach. The most typical example of the latter phenomenon is the Andean Pact (once among the most restrictive frameworks for foreign investments and transfer of technology) which, through a series of recent decisions, has authorized its member States to liberalize virtually all the main restrictions on the establishment and operation of transnational corporations. The Andean Pact now coexists with four main subregional groupings: the Caribbean Common Market (CARICOM) created in 1973; the Latin American Integration Association (LAIA), created in 1980 to replace the Latin American Free Trade Association (LAFTA); the Southern Cone Common Market (MERCOSUR), another regional trade pact, created in 1991, between Argentina, Brazil, Paraguay and Uruguay; and the Central American Common Market, established in 1991, to replace a similar organization which collapsed in 1969.

47. Since its inception, the Andean Pact has been the organization most immediately concerned with foreign investment issues and intellectual property and technology transfer (in addition to providing a system of preferential tariffs for Andean Pact members and a common external tariff). A major turning point in the policy approach of the Andean Pact to these issues was reflected in decision 291, adopted in May 1991 and superseding decision 220 (1987, which, in turn, had replaced decision 24). Decision 291 eliminates most of the remaining measures reflective of the restrictive investment regimes of the 1970s which

were not abolished by the increasingly liberal provisions prescribed by decision 220. Thus, the requirement of previous authorization for the establishment of foreign investments has been superseded by a simpler obligation to register foreign direct investment projects. Decision 291 also eliminates all previous conditions for the establishment of foreign direct investment, including the fade-out requirements according to which a wholly foreign-owned company had to transform itself into a mixed and, later, a completely nationally owned company in order to benefit from the Andean tariff system. Instead, decision 291 gives member countries complete discretion to establish national foreign direct investment regimes of their choice. It should be noted that most Andean Pact members have taken advantage of that flexibility to align themselves with the liberalizing trends that have set in throughout the developing regions.

48. The regulation of remittance of profits and transfer of capital was also left to the discretion of individual countries, in contrast with the rather stringent ceiling of 20 per cent on profit remittances imposed by decision 24. (Decision 220 also limited the ceiling to 20 per cent but provided that a member State could apply a more liberal ceiling if it chose to.) As far as settling disputes is concerned, decision 291 refers (as did decision 220) to the national legislation of the member countries (while article 51 of decision 24 stated that in no instrument shall there be "clauses that remove possible conflicts or controversies from national jurisdiction and competence of the recipient country or allow the subrogation by States to the rights and actions of their national investors").

49. In these and other matters, decision 291 prescribes that foreign investors shall have the same rights and obligations as national investors, except "as otherwise provided in the legislation of each member country" (article 2). It would seem that this provision reflects the maximum standard traditionally used by the Latin American countries for the treatment of foreign investors, whereby these investors are not to receive more favourable treatment than their domestic counterparts.

50. In parallel efforts, the Andean Pact strengthened the provisions on intellectual property rights by extending patent and trademark protection to 15 years and providing protection for pharmaceutical products (decision 311 of December 1991).

51. The revitalization of the Andean Pact was accompanied by the revival of the Central American Common Market (CACM) re-established in 1991 after it disintegrated in 1969. The new organization departs from the import substitution model on which the earlier one was based. While it provides for the liberalization of trade among the five countries that compose it, it aims in future at establishing free trade in services, free movement of capital and free movement of labour.

52. The Southern Cone Common Market (MERCOSUR), established by the Treaty of Asunción of 26 March 1991, is also rather limited in the field of foreign direct investment. It aims at establishing a common market of goods, services and factors of production between its members. Yet, since it does not provide concrete measures, binding obligations or implementation mechanisms, it does not thus far go beyond the mere expression of intentions.

## G. Recent integration efforts in Africa

53. A similar trend towards regional cooperation is taking place in Africa. In 1991, the Heads of States at the Organization for African Unity (OAU) summit meeting signed the Treaty establishing the African Economic Community. 12/ It has been submitted for ratification by member States. The aim of the Community would be to contribute progressively to the economic integration of the continent. This objective is to be achieved by the "gradual removal, among member States, of obstacles to the free movement of persons, goods, services and capital, and the right of residence and establishment" (article 4). Although the main provisions deal with trade, the Treaty has important provisions on foreign direct investment. The free movement of services and capital between member States will be insured through the right of establishment and residence mentioned above, as well as through "the elimination of restrictions on the transfer of capital funds between member States in accordance with a timetable to be determined by the Council" (article 45 (i)). Whereas such principles do not apply to the movement of capital with third States. In that respect, the assembly instituted by the Treaty, "shall take steps aimed at coordinating progressively the national and regional exchange control policies" (article 45.4).

## H. Recent integration efforts in Asia

54. Until recently, there was a conspicuous absence of coherent regional integration policy in the Asian continent or its subregions. Some forms of cooperation on foreign direct investment matters were established within the Association of South-East Asian Nations (ASEAN), but they lacked strong structure, probably due to the fact that most foreign investment flows originated outside the region. But many countries in Asia are now enjoying very high growth rates and trade surpluses and are rapidly becoming capital-exporting countries. At the same time, the formation of the European Economic Area, North America Free Trade Agreement, Australia/New Zealand Free Trade Pact and other regional arrangements required a similar response from the ASEAN countries. That response came in the last meeting of ASEAN, at which a resolution was adopted calling for the establishment of the ASEAN Free Trade Area within the next 15 years. ASEAN is apparently not rushing to have its own pact, for it is examining other possibilities, such as the new efforts to foster Asian/Pacific economic cooperation accords, within which it might play a pivotal role in foreign direct investment-related cooperation. It is also examining how changes in ASEAN cooperation could fit in the context of the changing world economy.

55. In view of the developments in Eastern Europe, in the Commonwealth of Independent States, led by Russia, and in the Indo-Chinese countries, ASEAN is aware that it is at a crossroads. It continues to be in need of collective efforts and vigilance on the economic fronts with respect to the neighbouring countries of India, China and Japan. As it explores new trade opportunities with the various trade blocs, it is trying also to cope with the fast pace in the development of global technology and to identify each country's role in the international division of production and comparative advantage. Meanwhile, ASEAN countries are improving their respective economic policies to maintain continuous foreign direct investment inflows and technology transfer for sustained economic growth in the region.

## IV. INTERREGIONAL COOPERATION ARRANGEMENTS

56. Developing countries have attempted for a long time to establish mechanisms to strengthen South/South cooperation, with mixed success. It is mainly among developed countries and between them and other developing countries that interregional cooperation arrangements have been more actively pursued in recent years.

### A. Enterprise of the Americas

57. In June 1991, the President of the United States launched the initiative Enterprise of the Americas, by which he laid out a comprehensive economic policy for the entire American continent, covering trade, investment and financial and environmental cooperation. The first step in the comprehensive project is to conclude framework cooperation agreements with the countries in the Latin American and Caribbean region. A total of 15 trade and investment agreements involving a total of 31 countries (only Cuba, Haiti and Suriname are not parties to any agreement) were concluded by the middle of 1992. Two of the agreements were signed with the Southern Cone Common Market (MERCOSUR) and with the Caribbean community. Their purpose is to monitor relations in the above-mentioned fields, thus paving the way for closer cooperation on trade and investment between the United States and the countries of the region.

### B. External policy of the EC

58. Thus far, the main beneficiaries of interregional cooperation with the EC have been the African, Caribbean and Pacific (ACP) countries. Cooperation has proceeded in the context of the four Lomé Conventions and has focused mostly on trade. After the Third Lomé Convention, cooperation was expanded to cover investment as well. The Fourth Lomé Convention was signed in 1990, and its provisions on investment included the standard of fair and equitable treatment. It also seeks to promote investment flows from the EC to the ACP countries by encouraging the conclusion of bilateral investment treaties which provide for a number of additional standards of protection and guarantees to those investments.

59. Other recent interregional cooperation instruments in preparation involving the EC seem no longer to cover foreign direct investment explicitly. The proposal to negotiate an economic cooperation agreement with the Andean Pact, which would replace the 1983 agreement, so far does not include foreign direct investment. Nor do such transactions seem to be dealt with in the negotiations of a cooperation agreement between the EC and ASEAN, although they cover specific, related matters such as intellectual property. The agreement signed between the Gulf Cooperation Council (GCC) and the EC in 1989 is also limited to trade, despite the importance of investment flows between the two regions. However, the issue was raised in the EC/GCC Industrial Cooperation Conference that met in May 1992, thus underlining its importance. On the other hand, the guidelines for a new partnership with the Maghreb contemplates a new Euro-agreement which will cover investments.

## V. BILATERAL INVESTMENT TREATIES

60. No review of international instruments for cooperation on foreign direct investment issues would be complete without making reference to one of the oldest and yet more commonly used types of arrangement, the bilateral treaty for the promotion and protection of foreign investments. 13/ In the past few years, the network of bilateral investment treaties continued to expand, to reach by mid 1991 a total of 440 signed treaties. Many of the most recent (since 1990) were concluded between capital-exporting developed countries and Central and Eastern European countries. Also some countries in Latin America recently began the practice of concluding bilateral investment treaties.

61. Overall, the format of bilateral investment treaties has not changed very much over the years. The treaties continue to provide a number of general standards of treatment (that is, fair and equitable, national and most-favoured-nation treatment) as well as specific standards for the most sensitive issues in investment relations - namely, expropriation and nationalization, transfer of payments, subrogation and settlement of disputes between investors and the Governments of their host countries. Although the question of entry and establishment has traditionally been left out of the treaties (to be determined by the laws of the host country), there is, nevertheless, a clear emphasis in these treaties on the facilitation of entry and establishment of investors from the other contracting party. Recent treaties, notably those concluded by the United States, stipulate that the entry and establishment of investors from the other contracting party should be granted on the basis of national and most-favoured-nation treatment. Specific issues related to operational conditions are usually left to be determined by the laws of the contracting States. Provisions relating to performance requirements are not a common feature of bilateral investment treaties, but the United States treaties include a clause specifically prohibiting performance requirements between the contracting parties.

## VI. CONTRIBUTION OF RECENT DEVELOPMENTS TO THE EMERGING INTERNATIONAL FRAMEWORK: A PRELIMINARY ASSESSMENT

62. In last year's report on the international framework for transnational corporations, it was noted that for a useful assessment of the formation and evolution of the framework it was essential to take stock of current theory and practice, based both on internationally agreed documents and on concepts and principles that have been generally recognized or accepted on the basis of what has become uncontested practice. Thus, an assessment of the current international framework would include:

(a) International agreements signed or endorsed by States;

(b) Voluntary standards elaborated or accepted by the subjects to whom they are addressed;

(c) State practice, particularly as it relates to the application of international norms and the implementation of international commitments.

63. In the above survey of recent developments in international cooperation on transnational corporations, account has been taken of a number of significant new additions to the international framework in all these three forms. There have been a number of legally binding international agreements concluded; new instruments containing voluntary guidelines have been adopted; and the follow-up mechanisms attached to instruments already in operation have provided useful insights on the State's practice regarding these international commitments. The task, therefore, is to evaluate how these new instruments and practices have affected existing principles and standards and to what extent they have confirmed the validity and relevance of those principles and standards or have underscored new policy directions which might render those principles less relevant, if not altogether obsolete. Also, one may ask if the present instruments reveal an attempt to revive past initiatives.

64. Inasmuch as recent negotiations of new instruments bring to the negotiating table current perceptions and approaches of States (and enterprises) on foreign direct investment issues, the new Guidelines on the Treatment of Foreign Direct Investment by the World Bank may provide a good indication of the state of the art in respect of the evolution of principles and standards in this field. Moreover, being a global instrument, the Guidelines are particularly useful for the study of principles and concepts which are acceptable to every State in relation to foreign direct investment from any other State. Therefore, they provide a measure of how far Governments and their private sectors are prepared to go in the acceptance of global standards on a number of important issues, some of which have been the subject of considerable debate (and disagreement) in the past.

65. It is significant to note that, in introducing the Guidelines, the World Bank stressed that the preparation of the text benefited from "best available practice" as identified by the institutions involved (the International Bank for Reconstruction and Development, the International Finance Corporation and MIGA), from extensive consultations with other international organizations, and from existing legal instruments and literature. In particular, "they present general principles and current trends inferred from extensive comparative background studies of bilateral investment treaties, multilateral treaties and other instruments pertaining to foreign investment, international arbitration awards and writings of international law experts, as well as national investment codes". 13/ It was also underlined that the Guidelines have a basis in existing legal instruments and may not be inconsistent with what some sources may consider to be settled international law.

66. Against this background, an examination of the World Bank Guidelines might provide important clues in relation to the questions raised in paragraph 63 above. A detailed analysis of their provisions would seem to exceed the scope of this report, but some general observations might be in order. First of all, the format follows the classic pattern of issues seen in previous international instruments, such as bilateral investment treaties. The Guidelines endorse the general standards of fair and equitable treatment, national and most-favoured-nation treatment as key pillars on which the international framework for the treatment of foreign investors is founded. Moreover, one of the main principles of the Guidelines is the encouragement of admission of foreign investors. They dedicate much attention to the question of nationalization, thus recognizing its importance in foreign investment

relations. Their approach to that issue also reflects a widespread opinion which holds that much of the debate on the formulae for compensation upon nationalization can be resolved by applying detailed and practical formulations, adaptable to each case. With respect to settlement of disputes, the Guidelines endorse the principle that disputes that cannot be settled through amicable or informal means may be submitted to independent arbitration.

67. None of these standards and concepts are new in the foreign direct investment normative landscape, of course. They have appeared in numerous international instruments addressing foreign direct investment - notably, bilateral investment treaties and the OECD instruments. However, many multilateral efforts have been frustrated in the past owing to the reluctance of a number of countries to accept them at the global level. What is significant here is that the Guidelines constitute a global instrument involving countries from all geographical regions and with sharply different levels of economic development, even though, at this stage, it does not have binding force. Thus, it would appear that the concept and principles that it embodies have acquired a more solid and clear presence in the international framework for foreign direct investment and transnational corporation activity.

68. Although it is premature to reach firm conclusions on the Uruguay Round instruments reviewed above in this report, it would appear that, if adopted, they would also make important contributions to the international framework for foreign direct investment and transnational corporation activity. They would become treaties and, therefore, would represent a superior source of obligation to States under international law on matters relating to foreign direct investment than the recommendations that predominate at the multilateral level. Their format is also significant and innovative in the sense that they underscore the close interrelations between foreign investment, trade, intellectual property, financial transfers and technological transfers. Similar considerations would apply to the majority of the regional integration arrangements and free trade zones, albeit within a more limited area of application. Most of these instruments, even the looser and less detailed ones, refer to the right of establishment or to freedom of capital movements as an objective to be attained. This is true for already existing instruments as well as for new texts.

69. While the number of instruments that refer to the standards of treatment for foreign investors has increased at all levels, the elaboration of instruments containing comprehensive standards for the activities of transnational corporations has lagged behind. Their approach tends to focus on the conclusion of instruments and standards dealing with specific issues rather than on general principles applicable to all aspects of transnational corporation activity. A number of issues have received particular international attention in recent years - the protection of the environment, the supervision of international banking and financial markets activity, and the avoidance of illicit payments in international business transactions, for example. In all these areas the international standards that are being prepared emphasize preventive measures - in particular, information disclosure.

70. It is expected that the elaboration of the international framework on transnational corporations will continue along these paths. And as the organizational structures and strategies of transnational corporations change,

there will be a need to catch up with the changes at the policy level, if a normative framework addressing these enterprises is to serve a useful purpose. This means that some of the traditional legal concepts and principles might need to be reviewed from time to time. For example, concepts and principles based on the nationality of a transnational corporation might need to be revisited in the light of the increasing globalization of these enterprises. Another issue that might also continue to attract attention is the normative framework for transnational mergers, acquisitions and contractual arrangements under conditions of fair competition. Similarly, the harmonization of a Government's approach to the granting of incentives might go a long way towards creating conditions for fair competition. And strengthening cooperation for the avoidance and resolution of conflicting requirements imposed on foreign investors might also add to other policy efforts by Governments to establish a legal framework for the expansion of productive foreign direct investment.

## Notes

1/ World Bank, Legal framework for the treatment of foreign investment, vol. II. Guidelines (Washington, D.C., 1992).

2/ See World Bank, Annual Report, 1992 (Washington, D.C., 1992), pp. 107-108.

3/ See International Convention on the Settlement of Disputes between States and Nationals of Other States (World Bank), "Report of the twenty-sixth annual meeting of the Administrative Council (Washington, D.C., October 1992), p. 6. The dispute concerned Manufacturers Hanover Trust Company, the Government of Egypt and the General Authority for Investment and the Free Zone.

4/ See the report of the President of the General Assembly at its forty-sixth session on the code (A/47/446, 15 September 1992).

5/ GATT, GATT Activities, 1991 (Geneva, 1991), p. 31. See also World Investment Report, 1992, (United Nations publication, Sales No. E.92.II.A.19).

6/ See OECD, "Selected extracts from the North American Free Trade Agreement (NAFTA)" (DAFFE/INV (92) 45).

7/ See World Investment Report, 1992, ...

8/ United States of America, Department of Justice, Press Release, 23 September 1991, annex.

9/ Bank for International Settlements, 62nd Annual Report (Basle, 1992).

10/ See Vivienne Robinson, "Recent developments in the law of the European Communities", Duke Journal of Comparative and International Law, vol. 2, No. 1 (Winter 1992) and A/47/120, para. 4.

11/ See Commission of the European Community, "Seventh report of the Commission to the Council and the European Parliament concerning the implementation of the white paper on the completion of the internal market" (2 September 1992).

12/ See A/46/651.

13/ See Bilateral Investment Treaties, 1959-1991 (United Nations publication, Sales No. E.92.II.A.16).

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